

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

Pre-MUR: 489

DATE SUBMITTED: May 7, 2009

DATE RECEIVED: August 14, 2009

DATE ACTIVATED: September 1, 2009

STATUTE OF LIMITATIONS: September 1, 2012

SOURCE: Project Vote

RESPONDENTS: Project Vote
Karyn Gillette

RELEVANT STATUTES: 2 U.S.C. § 438(a)(4)
11 C.F.R. § 104.15(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Project Vote, a non-profit 501(c)(3) corporation, and Karyn Gillette, its former Development Director, filed a *sua sponte* submission to report that they violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a) by soliciting individuals whose names appeared on a political committee disclosure report obtained from the Commission's website. Project Vote has not refunded the donations it received as a result of this solicitation. Telephone Conversation with Elizabeth Kingsley (November 5, 2009).

As discussed below, we recommend the Commission open a MUR, find reason to believe that Project Vote violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a),

Because Ms. Gillette appears to have been acting solely in her capacity as an

agent of Project Vote, we recommend that she be dismissed from this matter as a matter of prosecutorial discretion and issued a cautionary letter.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Project Vote is a non-profit 501(c)(3) corporation that organizes and implements national voter registration and get-out-the-vote programs. According to its mission statement, the organization "works to empower and mobilize low-income, minority, young, and other marginalized and under-represented voters."¹ Its website advertises three core programs focusing on traditional voter registration drives, election administration policy, and voter registration for clients of public assistance programs. Project Vote has not registered as a political committee with the Commission.

According to the *sua sponte* submission, in fall or winter of 2007, Project Vote's former Development Director, Karyn Gillette, downloaded the names and addresses of individuals who contributed to then-presidential candidate Barack Obama from his campaign's most recent report, published on the Commission's website. Gillette Affidavit ¶ 3. In May 2008, she used a subset of this list of names and addresses in a Project Vote direct mail solicitation. Gillette Affidavit ¶ 4 and Jacquot-Devries December 10, 2009 Affidavit ¶ 3. Ms. Gillette originally estimated that Project Vote solicited approximately 1,000 individuals from this list. *Id.* However, Project Vote later submitted a list of 7,853 names and addresses that were included in the direct mail solicitation, all of which were copied from the Obama committee's disclosure report. Jacquot-Devries January 8, 2010 Affidavit ¶ 6 and Exhibit 1; Telephone Conversation

¹ Available on the Project Vote website: <http://www.projectvote.org/our-mission.html> (last visited December 3, 2009).

1 with Elizabeth Kingsley, Counsel to Project Vote (January 6, 2010). The solicitation consisted
2 of one piece of mail per individual. Gillette Affidavit ¶ 4.

3 After two requests for information, we have determined that Project Vote received \$4,415
4 in donations from those individuals whose names and addresses were downloaded from the
5 Commission's website. Jacquot-Devries January 8, 2010 Affidavit ¶ 9. In the *sua sponte*
6 submission, Ms. Gillette estimated that the organization received less than \$5,000 from those
7 individuals who had been improperly solicited, although she did not formally track the
8 donations. Gillette Affidavit ¶ 4 and Telephone Conversation with Elizabeth Kingsley
9 (November 5, 2009). After receiving our request for documentation to support this \$5,000
10 estimate, Project Vote attempted to reconstruct a record of the improperly-solicited donations.
11 Project Vote compared its list of new donors in 2008 to a list of names and addresses it
12 mistakenly believed to have come from the disclosure report, and it submitted a list indicating
13 that Project Vote received \$3,485 from 21 improperly-solicited individuals. Jacquot-Devries
14 December 10, 2009 Affidavit ¶¶ 5, 8 and Exhibit B. We expressed our concerns about the
15 methodology of this survey, as it was not clear that it included funds received from all
16 improperly solicited donors.

17 In response to our concerns, Project Vote contacted its direct mail vendor to obtain the
18 original list of names and addresses actually included in the solicitation. Jacquot-Devries
19 January 8, 2010 Affidavit ¶ 6. The vendor provided Project Vote with the original list,
20 consisting of 7,853 names and addresses. *Id* at ¶ 6 and Exhibit 1. As all of the names on the list
21 were taken from the Obama committee disclosure report, Project Vote cross-referenced this list
22 with its list of donors from May 1, 2008 through the end of the year, and identified 39 common

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1 donors who gave a total of \$4,415 in 2008.² *Id* at ¶¶ 8, 9, and Exhibit 2; Telephone Conversation
2 with Elizabeth Kingsley (January 6, 2010).

3 Ms. Gillette states that she was not aware of the prohibition on this use of Commission
4 data at the time of her actions, and that when she learned of the prohibition, she disclosed her
5 actions to Project Vote's Executive Director, Michael Slater, in July or August of 2008. Gillette
6 Affidavit ¶ 5; Slater Affidavit ¶ 2. Mr. Slater conferred with Project Vote's legal counsel and
7 learned that Ms. Gillette's actions constituted a violation of the Federal Election Campaign Act
8 of 1971, as amended ("the Act"). Slater Affidavit ¶ 3. At that time, he instructed Ms. Gillette
9 that she should not use Commission data in solicitations and should ensure that her department
10 complied with this instruction as well. Slater Affidavit ¶ 4. Ms. Gillette states that the
11 solicitations in May 2008 appeared to be the only instance of Project Vote using Commission
12 data for solicitation purposes. Gillette Affidavit ¶ 6.

13 Ms. Gillette left her position at Project Vote on April 15, 2009. Slater Affidavit ¶ 5. A
14 few weeks later – approximately ten months after learning of the violation – Project Vote
15 reported the violation in this *sua sponte* submission. When we asked Project Vote to explain
16 why it delayed in reporting the violation, Project Vote stated that other more urgent matters
17 required its attention until recently, when a former Project Vote employee made public
18 accusations that the Obama campaign improperly coordinated with Project Vote during the 2008

² The difference between the two stated amounts received (\$3,485 and \$4,415, respectively) appears to be due to their being based on two completely different solicitation lists. See Jacquot-Devries January 8, 2010 Affidavit ¶¶ 11-13 and Exhibit 2; Telephone Conversation with Elizabeth Kingsley (January 6, 2010). Prior to submitting the second amount, Project Vote's counsel had suggested that monies received from Project Vote's prior donors in response to the solicitation might not be improper. However, the Commission need not resolve that question in this matter because there is no information in the submission to suggest that the second amount includes donations made by prior donors.

1 election cycle, in part by giving the organization its donor list.³ Telephone Conversation with
2 Elizabeth Kingsley (November 5, 2009). These allegations prompted Project Vote to address its
3 limited unauthorized use of the Obama Committee's donor list by filing this *sua sponte*
4 submission. *Id.* Project Vote has requested that this matter be approved for fast-track
5 resolution. Letter from Elizabeth Kingsley, Counsel to Project Vote, Accompanying Affidavits
6 (May 7, 2009).

7 **B. Legal Analysis**

8 Under the Act, any information copied from reports filed with the Commission may not
9 be sold or used by any person for the purpose of soliciting contributions or for commercial
10 purposes, other than using the name and address of any political committee to solicit
11 contributions from such committee. 2 U.S.C. § 438(a)(4). Commission regulations provide that
12 the phrase "soliciting contributions" includes soliciting any type of contribution or donation,
13 such as political or charitable contributions. 11 C.F.R. § 104.15(a), (b). The statute is violated
14 by use of Commission data that could subject the "public-spirited" citizens who contribute to
15 political campaigns to "all kinds of solicitations." *See* General Counsel's Report #3, MUR 5155
16 (Friends for a Democratic White House) (quoting *Federal Election Comm'n v. Political*
17 *Contributions Data, Inc.*, 943 F.2d 190, 197 (2d Cir. 1991)).

18 Based on the information provided in its submission, it appears that Project Vote has
19 violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). Project Vote's then-Development
20 Director copied names and addresses from reports filed with the Commission for the purpose of
21 soliciting donations to Project Vote. The solicitation of donations for a non-profit 501(c)(3)

³ These allegations were resolved as a part of MUR 6127 (Obama for America), in which the Commission found no reason to believe that Obama for America had given its donor list to Project Vote and failed to report the disbursement. *See* MUR 6127 (First General Counsel's Report)

1 organization falls within the scope of "soliciting contributions," as defined in
2 11 C.F.R. § 104.15(b), and within the statement from *FEC v. Political Contributions Data* and
3 relied on by the Commission in MUR 5155. Ms. Gillette included these names and addresses in
4 a direct mail solicitation in May 2008, and they yielded a return of \$4,415. Therefore, we
5 recommend the Commission open a MUR and find reason to believe that Project Vote violated
6 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a).

7 It appears that Ms. Gillette acted solely in her capacity as an agent of Project Vote in
8 violating the Act, and not in her own independent personal interest. Accordingly, we
9 recommend the Commission dismiss any alleged violation of 2 U.S.C. § 438(a)(4) and
10 11 C.F.R. § 104.15(a) as to Ms. Gillette as a matter of prosecutorial discretion, *see Heckler v.*
11 *Chaney*, 470 U.S. 821 (1985), and send her a cautionary letter.

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3 Finally, Project Vote has requested fast-track resolution, a procedure available at the
4 discretion of the Commission for certain self-reported respondents. See Policy Regarding Self-
5 Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 Fed. Reg. 16695,
6 16698 (April 5, 2007). Because the initial self-reporting submission was not sufficiently
7 thorough to obviate substantial follow-up by the Office of General Counsel, *see id.*, we do not
8 believe that this matter is appropriate for fast-track resolution.

9 **IV. RECOMMENDATIONS**

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11 1. Open a MUR.
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13 2. Find reason to believe that Project Vote violated 2 U.S.C. § 438(a)(4) and
14 11 C.F.R. § 104.15(a).
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16 3. Dismiss, as a matter of prosecutorial discretion, any allegation that Karyn Gillette
17 violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a), and send a cautionary
18 letter.
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20 4. Approve the attached Factual and Legal Analyses.
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22 5.
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6.


7. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

11/28/10
Date

BY:


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